

**ONE HUNDRED THIRD LEGISLATURE - FIRST SESSION - 2013**  
**COMMITTEE STATEMENT**  
**LB34**

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**Hearing Date:** Thursday March 14, 2013  
**Committee On:** Revenue  
**Introducer:** Hadley  
**One Liner:** Change provisions of the Nebraska Advantage Act

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**  
**Aye:** 8 Senators Hadley, Hansen, Harr, Janssen, McCoy, Pirsch, Schumacher, Sullivan  
**Nay:**  
**Absent:**  
**Present Not Voting:**

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<b>Proponents:</b> Sen. Galen Hadley Doug Ewald Ron Sedlacek	<b>Representing:</b> Introducer NE Dept. of Revenue NE Chamber of Commerce
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<b>Opponents:</b>	<b>Representing:</b>
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<b>Neutral:</b>	<b>Representing:</b>
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**Summary of purpose and/or changes:**

This bill makes changes to the Nebraska Advantage Act. Some of the changes may be significant in that they appear to relax current provisions relative to qualifying as a "taxpayer," change the method for establishing and using credits earned under the Act and create a presumption of interdependency when the project includes all taxpayer locations in the state. These changes apply only to applications filed on or after the effective date of the bill.

Section 1: Changes "calendar year" to "year" for purposes of calculating the county average weekly wage.

Section 2: Amends the definition of "equivalent employees" to clarify that salaried employees (as opposed to employees paid at an hourly rate) are "deemed" to have worked 40 hours per week for purposes of calculating the number of equivalent employees.

Section 3: Changes "calendar year" to "year" for purposes of calculating the Nebraska average weekly wage.

Section 4: Changes the definition of "taxpayer."

Current law restricts the definition of taxpayer to any person that is subject to sales and use taxes and withholding. Current law also defines taxpayer as specified types of entities (e.g. corporations, partnerships, etc.) that are subject to the same taxes and to those specified entities that would otherwise be a member of the same unitary group, if incorporated, and that are subject to the same taxes.

The bill eliminates the specific references and substitutes the word "entity."

Current law prohibits flow-through entities and cooperatives from meeting the definition of taxpayer if more than 20 percent of the partners or members are political subdivisions or exempt under I.R.C. Statute 501(c) or (d).

The bill strikes this language, so that flow-through entities and cooperatives may qualify as taxpayer's even though all or some portion of the partners or members are political subdivisions or exempt entities.

Current law excludes from the definition of taxpayer "political subdivisions" or an organization that is exempt from income taxes under section 501(a) of the I.R.C.

The bill creates a definition of "political subdivision" for purposes of the Act and includes in the definition a group of political subdivisions that form a joint public agency or are organized through an interlocal agreement or other method of joint action.

Section 5: Changes definition of "year" from "taxable year of the taxpayer" to "calendar year" for purposes of the Act.

Section 6: Creates a presumption of "interdependency" when the taxpayer's application or plan includes every location in the state that is "involved" in a qualified business activity.

Section 7: Changes the provisions for establishing and using credits.

For purposes of establishing credits, the bill changes "year" to "taxable year which includes the end of the year the credits were earned."

The bill creates new language for using credits: "Credits may be used beginning with the taxable year which includes December 31 of the year the required minimum levels were reached. The last year for which credits may be used is the taxable year which includes December 31 of the last year of the carryover period."

Changes "calendar year" to "year" for purposes of filing a refund claim.

Section 8: Creates a new provision allowing the Department to disclose information to an acquiring taxpayer about the project they are purchasing in order to determine future benefits and liabilities.

Section 9: Changes "calendar year" to "year" for purposes of the annual report.

The bill further modifies the annual report so that taxpayers will no longer report and the Department will not track the total number of employees in the state prior to the application date and in subsequent years. This change applies to individual taxpayer agreements as well as aggregated amounts reported by the Department.

Section 10: The changes in the bill apply to applications filed on or after the effective date of the bill.

Section 11: Repeals the appropriate statutory sections.

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**Explanation of amendments:**

The Committee amendment changes the approval period timelines for applications under the Nebraska Advantage Act. The amendment also clarifies the method by which the timeline shall be determined to have started, and allows the Tax Commissioner and the taxpayer to agree on the extension of this timeline.

